



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CITY OF SAN DIEGO,

Plaintiff,

v.

NATIONAL STEEL AND  
SHIPBUILDING COMPANY; et al.,

Defendants.

AND RELATED CROSS-ACTIONS  
AND COUNTERCLAIMS

CASE NO. 09-CV-2275 WQH (JLB)

**ORDER CONFIRMING  
SETTLEMENT BETWEEN BAE  
SYSTEMS SAN DIEGO SHIP  
REPAIR INC., SOUTHWEST  
MARINE, INC., STAR &  
CRESCENT BOAT COMPANY AND  
THE SAN DIEGO UNIFIED PORT  
DISTRICT, AND BARRING AND  
DISMISSING CLAIMS**

The Joint Motion of BAE Systems San Diego Ship Repair Inc., Southwest Marine, Inc. (collectively, "BAE Systems"), Star & Crescent Boat Company ("Star & Crescent"), and the San Diego Unified Port District ("Port District") for an Order Confirming Settlement and Barring and Dismissing Claims came on <sup>web</sup> ~~regularly for hearing~~ before this Court on <sup>web</sup> ~~November 30, 2015~~, the Honorable William Q. Hayes presiding.

After considering the moving and opposition papers, declarations submitted by the parties, the Settlement Agreement submitted to the Court for approval

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(attached to the Declaration of Michael S. Tracy) (the "Settlement Agreement") and the record as a whole, the **COURT HEREBY FINDS THAT** the Settlement Agreement entered into by and between BAE Systems, Star & Crescent, and the Port District is in the public interest, is fair and reasonable, both procedurally and substantively, consistent with the purposes of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. section 9601, et seq., and the Uniform Comparative Fault Act ("UCFA"), 12 U.L.A. 147, and was entered into in good faith under California Code of Civil Procedure sections 877 and 877.6 and the rule of *Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488 (1985), and that Star & Crescent and the SDMCC Entities<sup>1</sup> are entitled to contribution and indemnity protection under federal and state law theories for the apportionment of liability among alleged joint tortfeasors.

This matter having been briefed and submitted for decision, and good cause appearing,

**IT IS HEREBY ORDERED** that the Motion is **GRANTED**, and the Settlement Agreement is **APPROVED**.

**IT IS FURTHER ORDERED** that:

1. The Settlement Agreement is hereby approved as a good faith settlement and shall be afforded all the rights and protections that accompany this determination.

2. The Court further finds and determines that Section 6 of the UCFA is adopted in this case for purposes of determining the legal effect of the Settlement

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<sup>1</sup> "SDMCC Entities" shall mean and refer to San Diego Marine Construction Company (aka San Diego Marine Construction Co.), Star & Crescent Investment Co., Star and Crescent Boat Company, a division of San Diego Marine Construction Company, Star and Crescent Boat Company, Star and Crescent Investment Company, and Star and Crescent Ferry Company, except to the extent such entities, or any division of them, were merged, acquired, or otherwise succeeded in interest by MCCSD, San Diego Marine Construction Corp, Campbell Industries, Marine Construction and Design Co., or their respective affiliates.

1 Agreement, which means the proportionate share rule (and not the pro tanto rule of  
2 the Uniform Comparative Fault Among Tortfeasors Act ("UCATA")) shall apply  
3 to reduce BAE Systems' claims against non-settling parties.

4 3. Pursuant to Section 6 of the UCFA, Section 877.6 of the California  
5 Code of Civil Procedure, and CERCLA section 113(f), any and all claims, cross-  
6 claims or counterclaims for contribution or equitable indemnity against Star &  
7 Crescent and/or any or all of the SDMCC Entities arising out of the facts alleged in  
8 the claims, counterclaims, and cross-claims in this Action, regardless of when such  
9 claims are asserted or by whom, relating to Covered Matters under the Settlement  
10 Agreement are hereby **BARRED**. Such claims are barred regardless of whether  
11 they are brought pursuant to any federal or state statute, common law, or any other  
12 theory, as any such claims against Star & Crescent and/or any and all of the  
13 SDMCC Entities arising out of the facts alleged in this Action are in the nature of  
14 contribution claims arising out of a common liability, whether framed in terms of  
15 federal or state statute or common law.

16 4. Subject to Paragraphs 6 and 7 of this Order, and this Order becoming  
17 final and effective, all claims by BAE Systems and the Port District, respectively,  
18 against Star & Crescent and the SDMCC Entities with respect to "Covered  
19 Matters" under the Settlement Agreement (which expressly does not include  
20 "Excluded Matters") are hereby dismissed with prejudice. Star & Crescent and the  
21 SDMCC Entities have not alleged claims in this Action, and therefore, have no  
22 claims to dismiss.

23 5. Upon this Order becoming final and effective, all claims by BAE  
24 Systems and the Port District, respectively, against Star & Crescent and the  
25 SDMCC Entities relating to "Excluded Matters" shall be reserved and not deemed  
26 barred by entry of judgment or dismissal pursuant to the Settlement Agreement.

27 6. All claims relating to Polygon SW-29 and the Tidelands Property (as  
28 said terms are defined in the Tolling and Standstill Agreement previously entered

1 into by and between BAE Systems, the Port District, San Diego Gas & Electric  
2 Company, the City of San Diego, Star & Crescent and Campbell Industries (the  
3 "Tolling and Standstill Agreement")) including, without limitation, contract-related  
4 claims, made by BAE Systems and/or the Port District against Star & Crescent  
5 and/or against the SDMCC Entities, shall be dismissed WITHOUT prejudice,  
6 subject to the terms of the Tolling and Standstill Agreement.

7       7. The Court shall retain jurisdiction over both the subject matter of the  
8 Settlement Agreement and the parties to the Settlement Agreement for the duration  
9 of the performance of the terms and provisions of the Settlement Agreement for the  
10 purpose of enabling BAE Systems, the Port District, and Star & Crescent, and each  
11 of them, to apply to the Court at any time for such further order, direction, and  
12 relief as may be necessary or appropriate to construe, implement, or enforce  
13 compliance with the terms of the Settlement Agreement or for any further relief as  
14 the interest of justice may require.

15       8. BAE Systems, the Port District, and Star & Crescent, shall each bear  
16 their own costs and expenses, including attorneys' fees in this Action through the  
17 date of this Order but shall retain their respective right to seek costs and expenses,  
18 including attorneys' fees, from other parties to this Action to the extent such claims  
19 have not been dismissed or barred.

20       **IT IS SO ORDERED.**

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22 Dated: 11/13/15



23 Hon. William Q. Hayes  
24 Judge, United States District Court  
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